



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0801; FRL-9907-58-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions and additions to the Colorado State Implementation Plan (SIP) submitted by the Colorado Department of Public Health and the Environment (CDPHE) to EPA on May 25, 2011. The SIP revision to Colorado Regulation Number 3 and the Common Provisions Regulation addresses the permitting of sources of greenhouse gases (GHGs). Specifically, we are approving revisions to portions of Parts A, B and D of Regulation Number 3 to incorporate the provisions of EPA's 2010 Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule. The SIP revisions establish emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Colorado's PSD permitting requirements for their GHG emissions. EPA is approving the May 25, 2011 SIP revision to the Colorado PSD permitting program as being consistent with federal requirements for PSD permitting. EPA is also approving several grammar and punctuation changes to Regulation Number 3 made by the State and included in the May 25, 2011 submittal. EPA is finalizing this action under section 110 and part C of the Clean Air Act (the Act or CAA).

DATES: This final rule is effective [INSERT date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R08-OAR-2013-0801. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, ostendorf.jody@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

- (i) The words or initials Act or CAA mean or refer to the federal Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CDPHE mean or refer to the Colorado Department of Public Health and the Environment.

- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials GHG mean or refer to Greenhouse Gas.
- (v) The initials NSR mean or refer to New Source Review.
- (vi) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (vii) The initials SIP mean or refer to State Implementation Plan.
- (viii) The words State or CO mean the State of Colorado, unless the context indicates otherwise.

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I. Background for Our Final Action

The May 25, 2011 SIP submittal includes PSD permitting provisions that establish 1) GHG as a regulated pollutant under the PSD program, and 2) emission thresholds for determining which new stationary sources and modification projects become subject to Colorado's PSD permitting requirements for their GHG emissions consistent with EPA's GHG Tailoring Rule. The background for today's final rule and EPA's national actions pertaining to GHGs is discussed in detail in our proposal (see 79 FR 2144, January 13, 2014). The comment period was open for 30 days and we received no written comments.

II. What Final Action is EPA Taking?

Colorado has adopted and submitted regulations that are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. EPA is approving the May 25, 2011 submittal for incorporation into the SIP. The submitted revisions

establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Colorado's New Source Review (NSR) PSD program. Specifically, EPA is approving revisions to Regulation Number 3 Parts A, B and D and the Common Provisions Regulation. EPA has determined that these May 25, 2011 revisions are approvable into Colorado's SIP because they are consistent with the requirements of 40 CFR 51.166, in particular requirements set out in EPA's final GHG Tailoring Rule.

Minor grammatical and capitalization changes made throughout the May 25, 2011 submittal are also approved. These include minor changes to Parts A, B and D of Regulation Number 3. The changes do not revise the regulatory meaning in Regulation Number 3 and are, therefore, approved without specific reference in this notice. We are not acting on grammatical revisions to Part C of Regulation Number 3 since this is the State's Title V operating permit program and it is not part of the SIP.

III. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final action merely approves state law that meets federal requirements and disapproves state law that does not meet federal requirements; when finalized, this action would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on

tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 24, 2014.

Howard M. Cantor,
Acting Regional Administrator,
Region 8

40 CFR part 52 is amended to read as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G - Colorado

2. Section 52.320 is amended by adding paragraph (c)(128) to read as follows:

§52.320 Identification of plan.

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(c) * * *

(128) On May 25, 2011, the State of Colorado submitted revisions to 5 CCR 1001-5, Regulation 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, parts A, B, and

D. The May 25, 2011 submittal addresses the permitting of sources of greenhouse gases (GHGs). The revisions to portions of parts A, B, and D incorporate the provisions of the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule. The revisions establish thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Colorado's PSD permitting requirements for their GHG emissions. These revisions are consistent with federal requirements for PSD permitting.

(i) Incorporation by reference.

(A) 5 CCR 1001-5, Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part A, Concerning General Provisions Applicable to Reporting and Permitting, I.B., Definitions, I.B.10, Carbon Dioxide Equivalent (CO₂e); I.B.23., Greenhouse Gas (GHG); I.B.25., Major Source, I.B.25b; and I.B.44., Subject to Regulation; VI., Fees, VI.D., Fee Schedule; Part B, Concerning Construction Permits, II.A.4. and II.A.7; Part D,

Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, II., Definitions, II.A., introductory paragraph, II.A.8, Best Available Control Technology (BACT); II.A.22., Major Modification; II.A.24., Major Stationary Source; II.A.24.a., introductory paragraph, II.A.24.a.(ii); II.A.24.b.; II.A.38., Regulated NSR Pollutant, II.A.38.e. and II.A.38.f.; adopted October 21, 2010 and effective December 15, 2010.

[FR Doc. 2014-09251 Filed 04/23/2014 at 8:45 am; Publication Date: 04/24/2014]